

RECEIVED

DO NOT

RECEIVED

JUN 21 1993

Before The

**Federal Communications Commission**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Washington, D.C. 20554

In The Matter Of )

Implementation of Sections of the )

MM Docket No. 92-266

other terms to discourage the development of leased channel services that had been contemplated in the 1984 Act.

The rules tentatively adopted in the R&O, based on the highest implicit fee in the program category, will do little to remedy the problem that Congress wanted solved. The Commission recognized this, in effect, when it declared that "the rules we adopt should be understood as the starting point that will need refinement both through the rule making process and as we address issues on a case-by-case basis." (R&O §491). It goes on to explain that the standard adopted is only an "initial guide until we gain more experience in this area." (R&O §515).

The option adopted by the Commission was not one that had even been included among the three primary alternatives set forth in its Initial Notice of Proposed Rule Making as being under consideration. It appears largely to have grown out of comments filed by NCTA, TCI, TimeWarner, Comcast, Continental and Cole that reflected a cable-industry-set goal of avoiding the speculative "migration" of existing providers of cable programming. In effect, they succeeded in subverting the Congressional policy of affirmatively encouraging diversity with a policy minted for their own business convenience of keeping unaffiliated programming suppliers in their place.

In essence, the rule that the cable interests succeeded in getting adopted for the time being is one that would perpetuate and expand the highest implicit rate that any program supplier was induced to pay under whatever circumstances. Thus, for example, even if the programmer had some non-pecuniary or indirect interest in having his programming aired, whether religious, political, or to promote some related economic product, the high implicit rate he would have to pay would be likely to

discourage other less prosperous users from availing themselves of leased commercial access.

CBA submits that cost should be the fundamental basis for establishing rates for leased commercial access. It is cost that will give the correct economic signals and increase the competitiveness of the marketplace. To pin rates instead on the most distortedly high implicit charge made to a single user in the program category, no matter what reasons that particular user may have decided to accept the highest rate, would only prolong economically inefficient practices of the past and thwart Congress's policy to promote diversity among program suppliers.

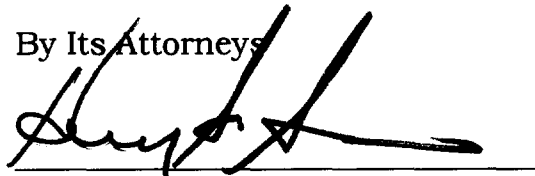
To the extent that cable companies cannot, after good faith efforts, establish their true economic costs for leased commercial access, there should be available an alternative mechanism the use of which would encourage the cable operators to move toward genuine costs. CBA suggests as such an alternative mechanism use of the arithmetic mean

commercial access into a separate and more focused proceeding. Even before doing that, the adoption of the proposal advanced here by CBA will begin effectuation of the Congressional policy.

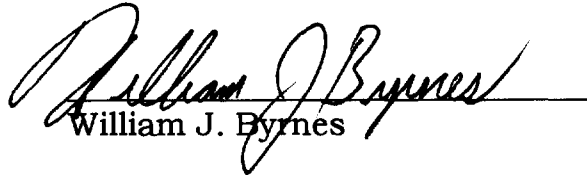
Respectfully submitted,

**COMMUNITY BROADCASTERS  
ASSOCIATION**

By Its Attorneys

A handwritten signature in black ink, appearing to read "Henry Solomon", written over a horizontal line.

Henry Solomon

A handwritten signature in black ink, appearing to read "William J. Byrnes", written over a horizontal line.

William J. Byrnes

HALEY, BADER & POTTS  
Suite 900  
4350 North Fairfax Drive  
Arlington, VA 22203-1633  
703/841-0606

June 21, 1993